

Message Text

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42

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INFO OCT-01 IO-12 ADP-00 L-03 DOTE-00 CIAE-00 COME-00

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EA-11 NEA-10 OIC-04 /117 W
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P R 111701 Z MAY 73

FM USMISSION OECD PARIS

TO SECSTATE WASHDC PRIORITY 9589

INFO AMEMBASSY LONDON

USMISSION GENEVA

UNCLAS SECTION 1 OF 2 OECD PARIS 13020

E. O. 11652: N/ A

TAGS: ETRN, OECD

SUBJECT: MTC: SG/ UNCTAD MEETING

FOR WEBB

SUMMARY: FINAL REPORT OF MEETING PRODUCED SECTION ON OBJECTIVES;
SECTION ON
LOYALTYARRANGEMENTS; SECTION ON DISPUTES ABOUT FREIGHT
RATES AND SURCHARGES; AND COVER NOTE TO ACCOMPANY COUNTER-
PROPOSAL. END SUMMARY.

1. SECTION ON OBJECTIVES DRAFTED WITHOUT REFERENCE TO PRINCIPLES
FOR REASONS IN TEXT:

BEGIN TEXT THE GOVERNMENTS PARTIES TO THIS AGREEMENT,
RECOGNIZING THE NEED FOR A UNIVERSALLY ACCEPTABLE CODE OF
CONDUCT FOR LINER CONFERENCES;

CONSIDERING THAT SUCH A CODE SHOULD BE DESIGNED TO ATTAIN THE
FOLLOWING OBJECTIVES:

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(1) TO FACILITATE THE ORDERLY EXPANSION OF WORLD SEABORNE TRADE BY: - IMPROVING THE OPERATION OF THE LINER CONFERENCE SYSTEM AS A MEANS OF PROVIDING EFFICIENT AND ECONOMIC SHIPPING SERVICES ADEQUATE TO MEET THE NORMAL REQUIREMENTS OF THE TRADES THEY SERVE; - BY SAFEGUARDING FAIR COMPETITION ON A COMMERCIAL BASIS BETWEEN CONFERENCES AND INDEPENDENT LINES.

(2) TO CREATE A BALANCE OF RIGHTS AND RESPONSIBILITIES BETWEEN SUPPLIERS AND USERS OF LINER SERVICES BY ESTABLISHING UNIVERSALLY ACCEPTABLE RULES AND PROCEDURES COVERING THE INTERNAL AND EXTERNAL RELATIONSHIPS OF LINER CONFERENCES WITH ALL PARTIES CONCERNED.
END TEXT.

2. SECTION ON LOYALTY ARRANGEMENTS (PARA 23) INCLUDES REFERENCE TO "LAWFUL FORM" THUS SATISFYING US DEL.

BEGIN TEXT

II. LOYALTY ARRANGEMENTS

23 CONFERENCE MEMBERS IN PROVIDING ADEQUATE SERVICES ARE ENTITLED TO INSTITUTE AND MAINTAIN LOYALTY ARRANGEMENTS WITH SHIPPERS UNDER THE CONTRACT SYSTEM OR SOME OTHER LAWFUL FORM OF LOYALTY ARRANGEMENT. THESE LOYALTY ARRANGEMENTS SHALL PROVIDE SAFEGUARDS MAKING EXPLICIT THE RIGHTS OF SHIPPERS AND CONFERENCE MEMBERS. SUBJECT TO THE FOREGOING, THE FORM OF LOYALTY ARRANGEMENT AND ITS TERMS ARE MATTERS FOR CONSULTATION BETWEEN THE CONFERENCE AND SHIPPERS' ORGANIZATIONS OR REPRESENTATIVES OF SHIPPERS.

(A) EXCLUSION

24. THE TERMS OF A LOYALTY ARRANGEMENT SHALL INCLUDE:

- A LIST OF CARGO INCLUDING BULK CARGO SHIPPED WITHOUT MARK OR COUNT SPECIFICALLY EXCLUDED FROM THE SCOPE OF THE LOYALTY ARRANGEMENTS

- A DEFINITION OF THE CIRCUMSTANCES IN WHICH CARGO OTHER THAN CARGO AT (A) IS CONSIDERED TO BE EXCLUDED FROM SCOPE OF THE LOYALTY ARRANGEMENT.

(B) DISPENSATION

25. THE TERMS OF A LOYALTY AGREEMENT SHALL INCLUDE PROVISION FOR UNCLASSIFIED

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EXAMINATION BY THE CONFERENCE OF REQUESTS BY THE SHIPPER FOR DISPENSATION AND FOR A DECISION TO BE GIVEN QUICKLY. WHERE A CONFERENCE IS UNABLE TO PROVIDE, WITHIN A PERIOD SPECIFIED IN THE LOYALTY ARRANGEMENT, SUFFICIENT SPACE TO ACCOMMODATE A SHIPPERS CARGO, IT

SHALL, IN ORDER THAT THE SHIPPER IS NOT HINDERED IN MEETING HIS COMMERCIAL OBLIGATIONS TOWARDS HIS BUYER, GIVE DISPENSATION TO THE SHIPPER TO MAKE ALTERNATIVE ARRANGEMENTS FOR THE SHIPMENT OF HIS CARGO ON A VESSEL WHICH HE SPECIFIED.

(C) DAMAGES

26. WHERE THERE IS A LOYALTY CONTRACT, THE EXTENT OF LIQUIDATED DAMAGES AND/ OR PENALTY TO BE PAID BY THE SHIPPER SHALL BE SPECIFIED IN THE CONTRACT. THE CONTRACT SHOULD ALSO SPECIFY THE CONDITIONS UNDER WHICH THE SHIPPER MAY RESUME FULL LOYALTY STATUS.

(D) RATE DIFFERENTIALS

27. THE TERMS OF A LOYALTY AGREEMENT SHALL INCLUDE PROVISION THAT IN A DUAL RATE CONTRACT THE DIFFERENCE BETWEEN THE TIED AND NON- TIED RATES SHOULD NOT EXCEED A STIPULATED PERCENTAGE OF THE NON- TIED RATE.

(E) TERMINATION

28. THE TERMS OF A LOYALTY AGREEMENT SHALL INCLUDE PROVISION FOR TERMINATION OF THE LOYALTY ARRANGEMENT WITHOUT PENALTY AFTER EXPIRY OF A STIPULATED PERIOD OF NOTICE. SUCH NOTICE SHALL BE GIVEN IN WRITING.

(F) DISPUTES

29. DISPUTES

29. IF THERE IS A DISPUTE BETWEEN A CONFERENCE AND A SHIPPERS' ORGANIZATION OR REPRESENTATIVES OF SHIPPERS ABOUT THE FORM OR TERMS OF A PROPOSED LOYALTY ARRANGEMENT, EITHER PARTY MAY REFER THE MATTER FOR RESOLUTION UNDER THE APPROPRIATE PROCEDURE TO BE AGREED UPON. END TEXT

3. FREIGHT RATE DISPUTE SECTION, PARAS 57 AND 58 FOLLOW:

BEGIN TEXT

VII. DISPUTES ABOUT FREIGHT RATES AND SURCHARGES

57. IF THERE IS A DISPUTE ABOUT .../...

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UNCLAS SECTION 2 OF 2 OECD PARIS 13020

C O R R E C T E D C O P Y (CORRECT MRN TO READ 13020 VICE 3020)

FREIGHT RATES OR SURCHARGES, EITHER PARTY MAY REFER THE MATTER TO BE DEALT WITH UNDER THE APPROPRIATE PROCEDURE.

58. WHATEVER THE PROCEDURES ADOPTED THE TIME LIMIT FOR THE IMPLEMENTATION OF A CHANGE IN RATES OR INSTITUTION OF A NEW RATE ON WHICH AGREEMENT HAS NOT BEEN REACHED SHALL NOT EXCEED THE PERIODS OF NOTICE REFERRED TO IN PARA. 39.

END TEXT.

4. COVER NOTE WHICH WILL ACCOMPANY COUNTER- PROPOSAL ATTEMPTS TO RETAIN UNITY, WHILE STILL PROVIDING INDIVIDUAL COUNTRY FLEXIBILITY.

BEGIN TEXT.

COUNTER- PROPOSALS DRAFT CODE OF CONDUCT FOR LINER CONFERENCES
SUBMITTED BY: BELGIUM, CANADA, DENMARK, FINLAND, FRANCE, FEDERAL
REPUBLIC OF GERMANY, GREECE, ITALY, JAPAN, NETHERLANDS, NORWAY,
SPAIN, SWEDEN, SWITZERLAND, UNITED KINGDOM OF GREAT BRITAIN AND
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NORTHERN IRELAND, UNITED STATES OF AMERICA (1)

IN RESPONSE TO THE REQUESTS OF THE DEVELOPING COUNTRIES DURING THE FIRST SESSION OF THE PREPARATORY COMMITTEE ON A CODE OF CONDUCT FOR LINER CONFERENCES, THE ATTACHED TEXT CONTAINS COUNTER-PROPOSALS FOR SECTIONS A TO E OF THE DRAFT CODE ATTACHED TO RESOLUTION TD/ III/ RES.66 FOR CONSIDERATION AT THE SECOND SESSION OF THE PREPARATORY COMMITTEE.

IT IS EMPHASIZED THAT THESE COUNTER- PROPOSALS ARE WITHOUT PREJUDICE TO THE POSITIONS WHICH GOVERNMENTS MAY TAKE DURING THE FURTHER PREPARATION OF A CODE.

WHILE THE COUNTRIES FAVOR INCLUSION OF A PROCEDURE FOR THE RESOLUTION OF DISPUTES IN A CODE, THEY HAVE NO PROPOSALS FOR THIS AT PRESENT. THE COUNTRIES DID NOT THINK IT ADVISABLE AT THIS STAGE TO ADVANCE A SET OF PRINCIPLES, IN PARTICULAR IN VIEW OF THE FACT THAT THE CODE MAY RESULT IN A LEGALLY BINDING INSTRUMENT AND THAT SUCH INSTRUMENTS DO NOT NORMALLY INCLUDE SEPARATE PROVISIONS OF THIS KIND.

THE COUNTER- PROPOSALS WILL NEED TO BE REVISED IN THE LIGHT OF PROVISIONS FOR IMPLEMENTATION AND ENFORCEMENT AND OF DEFINITIONS OF WORDS AND PHRASES.

FOOTNOTES: (1) REPRESENTATIVES OF AUSTRALIA AND NEW ZEALAND HAVE ATTENDED THE MEETING AT WHICH THIS TEXT WAS PREPARED. SINCE ASPECTS OF THE SHIPPING POLICIES OF THE AUSTRALIAN AND NEW ZEALAND GOVERNMENTS ARE UNDER REVIEW THEIR ATTITUDES ARE NOT NECESSARILY REFLECTED IN THE TEXT. FOOTNOTE TO TITLE " B". RELATIONS AMONG MEMBER LINES" SOME COUNTRIES RESERVE THEIR POSITION TO PROPOSE ADDITIONAL PROVISIONS CONCERNING ADMISSION TO CONFERENCES AND PARTICIPATION IN THE TRADE IN CONJUNCTION WITH THE METHOD OF RESOLUTION OF DISPUTES WHICH WILL BE ADOPTED. END TEXT. ROGERS

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